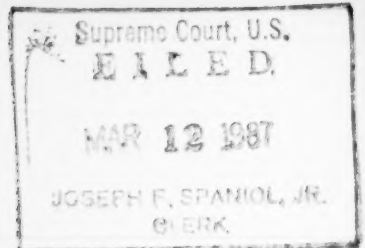


4
No. 86-1380



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

ARKANSAS PUBLIC SERVICE COMMISSION;
STATE OF ARKANSAS; ARKANSAS-MISSOURI
CONGRESSIONAL DELEGATION; AND MISSOURI
PUBLIC SERVICE COMMISSION,
Petitioners,
v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

and

No. 86-1424

ARKANSAS POWER & LIGHT COMPANY,
Petitioner,
v.

FEDERAL ENERGY REGULATORY
COMMISSION, ET AL.,
Respondents.

On Petition For Writ Of Certiorari To
The United States Court of Appeals
For The District of Columbia Circuit

PRELIMINARY RESPONSE OF
THE CITY OF NEW ORLEANS, ET AL.

March 11, 1987 [See inside cover for
list of counsel]

9/18

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TABLE OF AUTHORITIES

Cases:	<u>Page</u>
<u>Mississippi Industries v.</u> <u>FERC</u> , No. 85-1611 (D.C. Cir., Jan. 6, 1987)	2
Miscellaneous:	
Rule 20.4, Supreme Court Rules	2, 3

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PRELIMINARY RESPONSE OF
THE CITY OF NEW ORLEANS, ET AL.

A Petition for Writ of Certiorari was
filed with the Supreme Court by the



Arkansas Public Service Commission, the State of Arkansas, the Arkansas-Missouri Congressional Delegation and the Missouri Public Service Commission ("Arkansas-Missouri parties") in the above-captioned proceeding on February 20, 1987 and received by our office on February 24, 1987. A second Petition for Writ of Certiorari was filed by Arkansas Power & Light Company ("AP&L") on March 4, 1987 and received by our office on March 9, 1987. The City of New Orleans ("New Orleans") suggests that consideration of these petitions be deferred in light of Rule 20.4 of this Court.

The petitions seek review of the opinion of the United States Court of Appeals for the District of Columbia Circuit in Mississippi Industries v. FERC, No. 85-1611 (D.C. Cir., Jan. 6, 1987), which is currently the subject of several

petitions for rehearing and suggestions for rehearing en banc. One of these petitions was filed by New Orleans on February 20, 1987. Petitions for rehearing were also filed by Mississippi Power & Light Company; Mississippi Industries; the Mississippi Attorney General; and the Mississippi Public Service Commission.

The Petitions for Writ of Certiorari are premature. Pursuant to Rule 20.4 of the Supreme Court's rules of procedure, the time for filing a Petition for Writ of Certiorari is deferred for all parties if rehearing is requested by any party to the proceedings before the Court of Appeals. This rule reflects a policy of withholding action by the Supreme Court until the Court of Appeals has completed its review of the case.

Consistent with this policy, New Orleans requests that action on the petitions, including the time within which to respond, be deferred until the Court of Appeals has acted on the petitions for rehearing. The filing of a substantive response to the pending petitions at this time would serve no useful purpose. Although New Orleans intends to oppose the pending petitions, our position may be affected by the Court of Appeals' subsequent action. A further opinion from the Court of Appeals could change the context of the case and have an impact on the arguments before this Court. Indeed, if the Court of Appeals remands the case to the Federal Energy Regulatory Commission, the jurisdictional arguments raised in the pending petitions may become moot. These factors, as well as considerations of judicial economy,



support deferral of any further action until the Court of Appeals acts on rehearing.

Alternatively, if this Court determines that deferral is not appropriate, New Orleans respectfully requests that it be granted 30 days from the issuance of an order to that effect within which to file its brief in opposition to the Petitions for Writ of Certiorari filed by the Arkansas-Missouri parties and AP&L.

Respectfully submitted,

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